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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D. C. 20554

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JUN 27 2002

In the Matter of )  
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Waiver of the Rules of the Federal )  
Communications Commission Relating )  
to the Transmission of Digital Wireless )  
911 Calls from TTY Devices )

CC Docket No. 94-102

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Wireless II, L.L.C. d/b/a  
Nebraska Wireless Telephone Company

To: Chief, Wireless Telecommunications Bureau

**PETITION FOR WAIVER AND EXTENSION OF  
DIGITAL WIRELESS 911 TTY REQUIREMENTS**

Wireless II, L.L.C. d/b/a Nebraska Wireless Telephone Company (hereinafter "Petitioner"), by its attorneys, respectfully requests a waiver and extension of Section 20.18(c) of FCC Rules, 47 U.S.C. §20.18(c), and accompanying note. Specifically, Petitioner seeks a waiver and eighteen-month extension of the June 30, 2002 deadline by which digital wireless operators be capable of transmitting 911 calls from individuals with speech or hearing disabilities through means other than mobile radio handsets, e.g., through the use of Text Telephone Devices (TTY).

As set forth below, because circumstances exist wherein digital 911 TTY capability is not yet commercially available to Petitioner in a practical manner, Petitioner requests waiver of the deadline for digital 911 TTY capability. As demonstrated herein, good cause exists for this waiver because it is economically and technically infeasible for Petitioner to comply with the June 30, 2002

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deadline for digital 911 TTY implementation.<sup>1/</sup> With respect to the Commission's 911 Phase II rules, the Commission has specifically provided that a waiver would be granted in such "instances where technology-related issues or exceptional circumstances may mean that deployment of Phase II may not be possible..."<sup>2/</sup> This waiver policy is directly applicable to the June 30, 2002 deadline by which digital wireless providers must be capable of transmitting 911 calls using TTY devices.

### **Background and Facts**

1. The FCC has adopted rules to implement Section 2(b) of the Wireless Communications and Public Safety Act of 1999, fulfilling the Congressional directive that wireless communications operators deploy a nationwide, seamless communications infrastructure for emergency services.<sup>3/</sup> On December 1, 1997, the Commission adopted a *Memorandum Opinion and Order*, CC Docket No. 94-102, FCC 97-402, released December 13, 1997 ("MO&O") which, at para. 59, suspended until October 1, 1998 enforcement of the requirement that licensees providing service on *digital* wireless

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<sup>1/</sup> "The Commission may exercise its discretion to waive a rule where particular facts would make strict compliance inconsistent with the public interest." *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (DC Cir 1990) citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (DC Cir 1969). Waiver of a Commission rule is appropriate where (1) the underlying purpose of the rule will not be served, or would be frustrated, by its application in a particular case, and grant of the waiver is otherwise in the public interest, or (2) unique facts or circumstances render application of the rule inequitable, unduly burdensome or otherwise contrary to the public interest, and there is no reasonable alternative.

<sup>2/</sup> Revision of Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, *Report and Order and Further Notice of Proposed Rulemaking*, 11 FCC Rcd 18,710, 18,718 (1996).

<sup>3/</sup> Wireless Communications and Public Safety Act of 1999, Pub. L. No. 106-81, §2(b).

systems be able to transmit 911 calls made by individuals with speech or hearing disabilities. Suspension of enforcement of the subject Section 20.18(c) of the Commission's Rules was further extended until November 15, 1998,<sup>4/</sup> and again until January 1, 1999.<sup>5/</sup> Finally the Commission established the current deployment deadline of June 30, 2002.<sup>6/</sup>

2. Petitioner is a Personal Communications Services ("PCS") operator serving the Basic Trading Areas of Grand Island-Kearney, Norfolk, North Platte, and Hastings, Nebraska. It operates on a CDMA 1900 platform from 32 transmitter sites. Petitioner is owned by local, independent, rural telephone companies or their affiliates that are striving to supplement basic local exchange services with wireless communications services. Petitioner and its owners are well known within the service area for providing dependable service and for working closely with the community to meet the needs of residents and businesses, particularly special needs such as TTY capability.

3. Petitioner will implement TTY/E911 capability, to the benefit of persons with speech and hearing disabilities, as soon as it is technically and economically feasible. Anticipating that it will be able to offer reliable TTY/E911 digital wireless service within the next eighteen months, Petitioner is also planning to participate in marketing, distribution and consumer education efforts as

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<sup>4/</sup> Order in CC Docket No. 94-102, DA 98-1982 (Wireless Telecommunications Bureau), released September 30, 1998.

<sup>5/</sup> Order in CC Docket No. 94-102, DA 98-2323 (Wireless Telecommunications Bureau), released November 13, 1998.

<sup>6/</sup> Fourth Report and Order, CC Docket No. 94-102, FCC 00-436, released December 14, 2000.

recommended by the TTY Forum or as adopted by the Commission. Petitioner recognizes the value of offering TTY/E911 connections as a part of its wireless digital service, and will seek to have the TTY/E911 feature implemented to full advantage, both as a matter of public health and safety and as a matter of good business practice.

### **Justification for Waiver**

4. Petitioner has made efforts to meet the June 30, 2002 deadline, and has determined that compliance is not presently achievable due to the lack of equipment to facilitate compliance with Section 20.18(c) in an economically feasible and technically reliable manner. Petitioner's Nortel digital switch was just equipped, on May 8, 2002, with software baseline MTX09 which is not conducive to delivery of 911 calls from TTY devices. To become TTY capable, the switch must be equipped with Nortel's software load MTX10. Petitioner was informed by Nortel that the switch could not safely be upgraded from MTX08 directly to MTX10. Petitioner must first install and operate level MTX09. The transition to MTX10 will require involvement by other vendors to modify the interface, and still others to modify the hardware in preparation for an MTX10 installation. Now that Petitioner has completed the upgrade to MTX09, additional months will be required to transition to MTX10 and 911 TTY capability.

5. Petitioner has sought guidance from Nortel and its other vendors, but no satisfactory solution has been identified that would allow Petitioner to become 911 TTY compliant by June 30, 2002. The incremental nature of the necessary upgrades and the coordination required among vendors

8. To fully implement 911 TTY capability, Petitioner will be required to spend well over \$240,000. This figure is an estimate because Petitioner has been unable to secure specific quotes from its vendors, including Nortel, for each element of required software, hardware, installation and other charges. Although repeatedly requested, the figures have not been delivered, likely due to vendor staff shortages, and the fact that Petitioner is one of their more insignificant customers. Furthermore, Petitioner has no ready financing sources for the upgrade, because of leverage restrictions placed upon Petitioner by existing lenders. Any new debt incurred by Petitioner would be subordinate to credit extended by NTFC Capital Corporation ("NTFC"), who has provided financing for Petitioner's earlier purchases from Nortel. This renders Petitioner unattractive as a borrower. NTFC itself is unwilling to make additional loans to Petitioner without 100% guarantees, or essentially equity financing. Clearly, the high cost of 911 TTY capability is too great a burden to place upon this small wireless system, whose entire operation cumulatively showed a net loss of \$2,998,816 and \$4,033,490 income in years 2001 and 2000, respectively.<sup>7/</sup>

#### **Request for Waiver**

9. Petitioner requests a waiver of Section 20.18(c) in furtherance of the public interest. The unique and unusual circumstances surrounding the transmission of 911 calls using TTY devices on Petitioner's digital wireless system warrants special consideration by the Commission. Petitioner's

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<sup>7/</sup> Petitioner's audited adjusted income statement and balance sheet for years 2000 and 2001 are attached hereto.

inability to comply with the implementation deadline is due to circumstances beyond Petitioner's immediate control, which render compliance by June 30, 2002 technologically and financially unachievable. An extension of time to comply would allow Petitioner, a small rural wireless operator, to implement digital 911 TTY in a fashion that will greatly ease the burden on Petitioner's subscribers, and will permit a logical transition within Petitioner's network infrastructure. Further, at this time, digital TTY handsets are not readily available for use by CDMA providers in smaller markets. This consideration virtually assures that no large portion of the public will be harmed by grant of the subject waiver.

10. Enforcement of Section 20.18(c) requirements against Petitioner would only threaten the ongoing viability of Petitioner's wireless services, which are nascent in their operations and which are offered in a rural area of the United States. Petitioner consistently attempts to offer the best service possible to its subscribers, some of whom would not otherwise receive wireless service in the areas of benefit to them. The FCC has stated numerous times that it seeks to be a proponent of the spread of telecommunications services to rural areas.<sup>8/</sup> In this case, Petitioner requests the opportunity to continue with the high quality of service that it presently offers to its customers, and to be relieved of the immediate obligation to offer digital TTY/E911 transmissions by means of a waiver of Section 20.18(c) the FCC's rules.

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<sup>8/</sup> Report and Order In the Matter of Federal-State Joint Board on Universal Service 12 FCC Rcd 8776, 8799-8806 (May 7, 1997).

**Conclusion**

For the reasons explained, Petitioner requests a waiver of the Commission's requirements for transmission of 911 calls made from TTY devices using digital wireless systems, and, in particular, an eighteen-month extension of the June 30, 2002 date for commencement of compliance with Rule Section 20.18(c). Petitioner's showing herein is consistent with the requirements for waiver set forth by the FCC. Its request is specific, focused and limited in scope, and with a clear path to full compliance. Furthermore, the public interest benefit of such grant exceeds the benefit of enforcement of the deadline in this instance. Accordingly, Petitioner requests that a waiver be granted as proposed.

Respectfully submitted,

**WIRELESS II, L.L.C. d/b/a  
NEBRASKA WIRELESS TELEPHONE COMPANY**

By: Pamela L. Gist

David L. Nace  
Pamela L. Gist  
Its Attorneys

Date: June 27, 2002

Lukas, Nace, Gutierrez & Sachs, Chartered  
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Washington, D.C. 20036

Telephone: 202-857-3500

**Wireless II, L.L.C.**

**Financial Statements  
With  
Independent Auditor's Report**

**For The Years Ended  
December 31, 2001 and 2000**

**Van Hoet & Company, Chartered**  
*Certified Public Accountants*



# Wireless II, L.L.C.

## Financial Statements With Independent Auditor's Report

December 31, 2001 and 2000

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**Van Hoet & Company, Chartered**

*Certified Public Accountants*

10985 Cody, Suite 100

Overland Park, KS 66210

BUS: (913) 696-1896 FAX: (913) 696-0210

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**Independent Auditor's Report**

To The Members  
Wireless II, L.L.C.  
Grand Island, Nebraska

We have audited the accompanying balance sheets of Wireless II, L.L.C. (a Nebraska L.L.C. d/b/a Nebraska Wireless) as of December 31, 2001 and 2000, and the related statements of income, members' equity and cash flows for the years then ended. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audit.

We conducted our audit in accordance with U.S. generally accepted auditing standards. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Wireless II, L.L.C. as of December 31, 2001 and 2000, and the results of its operations and its cash flows for the years then ended in conformity with U.S. generally accepted accounting principles.

The accompanying financial statements have been prepared assuming that the Company will continue as a going concern. As discussed in Note 13 to the financial statements, the Company has suffered recurring losses from operations since its inception, will incur further operating losses in 2002, and is in violation of certain loan covenants that permit the loan to become due on demand. These conditions raise substantial doubt about the Company's ability to continue as a going concern at December 31, 2001. Management's plans regarding those matters are described in Note 13. The financial statements do not include any adjustments that might result from the outcome of this uncertainty.

*Van Hoet & Company*

Overland Park, Kansas

January 24, 2002

**Wireless II, L.L.C.**  
**Balance Sheets**  
**December 31, 2001 and 2000**

<b>ASSETS</b>		
	<b>2001</b>	<b>2000</b>
<b><u>Current Assets</u></b>		
Cash and Cash Equivalents (Notes 1, 2 and 14)	\$519,294	\$944,992
Accounts Receivable, Net of Allowance (Note 3)	410,957	241,793
Inventory (Note 1)	116,885	128,068
Prepayments (Notes 4 and 14)	79,848	82,880
Total Current Assets	<u>1,126,984</u>	<u>1,397,733</u>
<b><u>Noncurrent Assets</u></b>		
FCC Licenses, Net (Notes 5 and 14)	742,234	559,229
Microwave Relocations, Net (Notes 6 and 14)	1,668,965	919,925
Deferred Financing Costs, Net (Note 7)	79,128	63,267
Total Noncurrent Assets	<u>2,490,327</u>	<u>1,542,421</u>
<b><u>Property, Plant and Equipment (Notes 1, 8 and 9)</u></b>		
Plant Under Construction	0	367,918
Plant In Service	<u>11,612,958</u>	<u>10,532,251</u>
Total Plant	11,612,958	10,900,169
Less: Accumulated Depreciation	<u>(2,800,269)</u>	<u>(1,510,148)</u>
Net Property, Plant and Equipment	<u>8,812,689</u>	<u>9,390,021</u>
<b>Total Assets</b>	<u><u>\$12,430,000</u></u>	<u><u>\$12,330,175</u></u>

**Wireless II, L.L.C.**  
**Balance Sheets**  
**December 31, 2001 and 2000**

<b>LIABILITIES AND MEMBERS' EQUITY</b>		
	<b>2001</b>	<b>2000</b>
<b><u>Current Liabilities</u></b>		
Current Maturities - Long-Term Debt (Note 9)	\$4,977,313	\$0
Accounts Payable	1,163,718	899,968
Advance Billing and Customer Deposits	76,088	54,550
Accrued Property Tax	180,531	132,841
Other Current Liabilities	0	134,337
Total Current Liabilities	<u>6,397,650</u>	<u>1,221,696</u>
 <b><u>Long-Term Debt (Note 9)</u></b>		
Note Payable	4,977,313	4,977,313
Current Maturities	<u>(4,977,313)</u>	<u>0</u>
Total Long-Term Debt	<u>0</u>	<u>4,977,313</u>
 <b><u>Commitments and Contingencies (Notes 9 and 14)</u></b>		
 <b><u>Members' Equity (Notes 9, 11 and 14)</u></b>		
Members' Shares - Voting (1,200 shares authorized, 900 shares issued and outstanding)	16,174,145	13,274,145
Members' Shares - Nonvoting (1,200 shares authorized, 0 shares issued and outstanding)	0	0
Accumulated Deficit	<u>(10,141,795)</u>	<u>(7,142,979)</u>
Total Members' Equity	<u>6,032,350</u>	<u>6,131,166</u>
 <b>Total Liabilities and Members' Equity</b>	 <u><u>\$12,430,000</u></u>	 <u><u>\$12,330,175</u></u>

The accompanying notes are an integral part of these financial statements.

**Wireless II, L.L.C.**  
**Statements of Income**  
**For the Years Ended December 31, 2001 and 2000**

	<u>2001</u>	<u>2000</u>
<b><u>Operating Revenue (Note 1)</u></b>		
Subscriber Revenue	\$2,197,377	\$1,254,056
Sales Revenue	232,612	52,683
Roaming Revenue	935,102	241,427
Other Revenue	160,666	75,760
Total Operating Revenue	3,525,757	1,623,926
Less: Uncollectible Operating Revenue	(176,547)	(146,558)
Net Operating Revenue	3,349,210	1,477,368
<b><u>Operating Expense</u></b>		
Cost of Goods Sold	544,839	179,539
Network Operations Expense	1,689,481	1,253,545
Customer Care Expense	177,403	155,563
Marketing and Selling Expense (Note 1)	1,050,950	925,640
General and Administrative Expense	1,075,825	809,490
Depreciation and Amortization Expense (Notes 1 and 8)	1,454,892	1,773,690
Total Operating Expense	5,993,390	5,097,467
Operating Loss	(2,644,180)	(3,620,099)
<b><u>Other Income (Expense)</u></b>		
Interest Income	29,814	93,071
Nonoperating Revenue	(2,188)	24,680
Total Other Income (Expense)	27,626	117,751
Net Loss Before for Fixed Charges	(2,616,554)	(3,502,348)
Fixed Charges (Note 9)	382,262	531,142
Net Loss	(\$2,998,816)	(\$4,033,490)

The accompanying notes are an integral part of these financial statements.

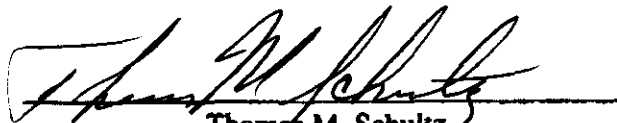
### **DECLARATION**

I, Thomas M. Schultz, hereby state and declare:

1. I am Director of Network Operations for Wireless II, L.L.C. d/b/a Nebraska Wireless Telephone Company, a Personal Communications Services operator and the petitioner herein.
2. I am familiar with the facts contained in the foregoing "Petition For Waiver And Extension of Digital Wireless 911 TTY Requirements" and I verify that those facts are true and correct to the best of my knowledge and belief, except that I do not and need not attest to those facts which are subject to official notice by the Commission.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 27 day of June, 2002.

  
Thomas M. Schultz

## **CERTIFICATE OF SERVICE**

I, Loren Costantino, an employee in the law offices of Lukas, Nace, Gutierrez & Sachs, Chtd., do hereby certify that I have on this 27<sup>th</sup> day of June, 2002, sent by hand-delivery, a copy of the foregoing PETITION FOR WAIVER AND EXTENSION OF DIGITAL WIRELESS 911 TTY REQUIREMENTS to the following:

Thomas J. Sugrue, Chief  
Wireless Telecommunications Bureau  
Federal Communications Commission  
445 12th Street, S.W., Room 3-C252  
Washington, D.C. 20554

Mindy Littell  
Policy Division  
Wireless Telecommunications Bureau  
Federal Communications Commission  
445 12th Street, S.W., Room 3-A161  
Washington, D.C. 20554

  
Loren Costantino